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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

## **San Francisco Division**

**11** On the Cheap, LLC DBA Tru Filth, LLC,  
a California limited liability company,

**CASE NO. CV CV 10 -04472 BZ**

**1. PLAINTIFF'S REQUEST FOR ORDER  
VACATING CASE MANAGEMENT  
CONFERENCE , OR, IN THE  
ALTERNATIVE, FOR A TELEPHONIC  
CONFERENCE.**

## AND

## 2. STATUS REPORT

**JUDGE: Bernard Zimmerman, United States  
Magistrate Judge**

**Date:** April 25, 2011  
**Time:** 4:00 p.m.

**PLAINTIFF'S REQUEST FOR ORDER VACATING CASE  
MANAGEMENT CONFERENCE , OR, IN THE ALTERNATIVE, FOR A  
TELEPHONIC CONFERENCE**

22 This matter is scheduled for a case management conference ("CMC") on April 25, 2011  
23 at 4:00 p.m. in Courtroom G, 15th Floor, San Francisco. However, because all defendants are  
24 Doe defendants who are Internet service subscribers whose true identities are currently known  
25 only to their Internet service providers ("ISPs"), no defendant has yet been served. So, there are  
26 currently no identified defendants with whom to hold conferences. The Court is asked to take  
27 notice of the fact that the semi-anonymity available from the Internet allows copyright "pirates"

1 to enjoy the fruits of their piracy while forestalling litigation against them for their  
 2 infringements.

3 On February 3, 2011, the Court issued its Order Granting Ex Parte Application for Leave  
 4 to Take Limited Discovery Prior to a Rule 26 Conference. The Application essentially sought  
 5 leave to serve subpoenas on ISPs that require them to disclose subscribers whose accounts were  
 6 used in connection with copyright infringements from specific Internet Protocol (IP) addresses at  
 7 particular dates and times.

8 As more fully described in the Status Report section of this filing, depending upon the  
 9 speed with which ISPs can respond to subpoenas (various ISPs have indicated different  
 10 capabilities with respect to the speed with which they can completely respond to subpoenas), the  
 11 requested preliminary discovery is taking many months.

12 In view of the foregoing, Plaintiff requests that the scheduled CMC be vacated and that,  
 13 instead, Plaintiff be required to submit a status report approximately 150 days from now, namely  
 14 on about September 26, 2011.

15 In the alternative, Plaintiff requests that the CMC be held telephonically. The  
 16 undersigned would attend. His land line telephone number, at which he will be available  
 17 Monday, April 25, 2011 at 4:00 p.m. if the CMC is held telephonically is

18 Land Line Tel: **310-657-2176**.

19 The undersigned can always be reached at his business telephone number **310-435-7656**.

20 Plaintiff expresses its gratitude to the Court in advance for its consideration.

21

## 22 PLAINTIFF'S STATUS REPORT

23 This case is a copyright infringement case. It involves the mass piracy of motion pictures  
 24 that have been plaguing the country as advances in technology have made infringements almost  
 25 effortless to accomplish at the same time that identifying the infringers has become more  
 26 difficult.

27

28

1           Former United States Senator Chris Dodd, in his inaugural speech as the new president of  
 2 the Motion Picture Association of America, on March 29, 2011, stated,

3           "Let's begin with perhaps the single biggest threat we face as an industry:  
 4 movie theft. At the outset, I want you to know that I recognize and appreciate that  
 5 NATO [National Association of Theatre Owners] members are on the front lines  
 6 every day when it comes to preventing camcording. Further, I want you to know  
 7 that the member studios of the MPAA deeply appreciate the efforts you make  
 8 every day to stop the hemorrhaging of movie theft in your theaters.

9           "I am deeply concerned that too many people see movie theft as a  
 10 victimless crime. After all, how much economic damage could there be to some  
 11 rich studio executive or Hollywood star if a movie is stolen or someone watches a  
 12 film that was stolen? It is critical that we aggressively educate people to  
 13 understand that movie theft is not just a Hollywood problem. It is an American  
 14 problem.

15           "Nearly 2.5 million people work in our film industry. The success of the  
 16 movie and TV business doesn't just benefit the names on theater marquees. It also  
 17 affects all the names in the closing credits and so many more - middle class folks,  
 18 working hard behind the scenes to provide for their families, saving for college  
 19 and retirement. And since movies and TV shows are now being made in all 50  
 20 states, Puerto Rico and the District of Columbia, movie theft harms middle class  
 21 families and small businesses all across the country.

22           "Those who steal movies and TV shows, or who knowingly support those  
 23 who do, don't see the faces of the camera assistant, seamstresses, electricians,  
 24 construction workers, drivers, and small business owners and their employees  
 25 who are among the thousands essential to movie making."

26           See, e.g., the web page at,

27           <http://www.boxofficemagazine.com/news/2011-03-29-new-mpaa-chief-senator-chris-dodd-delivers-inaugural-state-of-the-industry-speech>

28           a copy of which is attached hereto as **Exhibit 5**.

29           In written responses to a series of questions submitted by Variety magazine that were  
 30 published on April 13, 2011, Vice President Joe Biden stated,

31           "Look, piracy is outright theft. People are out there blatantly stealing from  
 32 Americans -- stealing their ideas and robbing us of America's creative energies.  
 33 There's no reason why we should treat intellectual property any different than  
 34 tangible property.  
 35           \*\*\*

36           "The fact is, media companies have already taken significant steps to  
 37 adapt their business models to keep up with changes in how we watch movies and  
 38 listen to music. Content is being offered to consumers in a variety of different ways  
 39 that make it easy and cost-effective for people to access legal material. Anyone  
 40 who does not understand this should simply talk with one of my grandkids."

1 The Variety article can be seen here,

2 <http://www.variety.com/article/VR1118035369>

3 a copy of which is attached hereto as **Exhibit 6**.

4 Of course, what we do have the Copyright Act, and aggrieved parties must, for the most  
5 part, enforce their copyrights themselves.

6 But, because there are obstacles slowing down identification of the people using the  
7 Internet for their infringing activities, as described in the Declaration of Jon Nicolini that is of  
8 record in this case, and see Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573, 577 (N.D. Cal.  
9 1999), serving actual defendants with summons and complaint is delayed.

10 Attached hereto as **Exhibit 2** is an analogous case decided by Judge Beryl A. Howell of  
11 the District Court of the District of Columbia. That case is Call of the Wild Movie, LLC v. Does  
12 1-1,062, (D. DC 2011) decided March 22, 2011 (U.S. District Court for the District of Columbia,  
13 Case No. CV 10-00455-BAH). The main reason that case is attached is to confirm that, in these  
14 cases, obtaining the identities of the Doe defendants is a very time consuming effort. The Court  
15 is asked to take notice that that case had been pending for a year by the time that opinion was  
16 rendered, without any defendant's being served. (A review of the PACER record for that case  
17 will confirm that fact.)

18 The undersigned counsel has filed in this District other cases involving these mass  
19 copyright infringements. In total, there are ten (10) cases pending here. They are,

20 Patrick Collins, Inc. v. Does 1-1219, Case No. CV 10-04468 LB  
21 Third World Media, LLC v. Does 1-1568, Case No. CV 10-04470 LB  
22 Media Products, Inc. DBA Devil's Film v. Does 1-1257, Case No. CV 10-04471 MEJ  
On the Cheap, LLC DBA Tru Filth, LLC v. Does 1-5011, Case No. CV 10-04472 BZ  
23 Third Degree Films, Inc. v. Does 1-2010, Case No. CV 10-05862 HRL  
New Sensations, Inc. v. Does 1-1745, Case No. CV 10-05863 MEJ  
24 New Sensations, Inc. v. Does 1-1768, Case No. CV 10-05864 PSG  
Diabolic Video Productions, Inc. v. Does 1-2099, Case No. CV 10-05865 PSG  
Evasive Angles, Inc. v. Does 1-1149, Case No. CV 10-05885 JCS  
25 Patrick Collins, Inc. v. Does 1-3757, Case No. CV 10-05886 LB

26  
27 Each case involves a single work that has been infringed by numerous "semi-anonymous"  
28 Doe defendants. By now, in every one of these cases an Ex Parte Application for Leave to Take  
Plaintiff's Request for Order Vacating Case Management Conference , or, in the Alternative, for a  
Telephonic Conference, and Status Report - CV 10 -04472 BZ 4

1 Limited Discovery Prior to a Rule 26 Conference has been filed. In three of the cases, by early  
 2 February, 2011 orders issued allowing discovery prior to a Rule 26 conference so that plaintiffs  
 3 could subpoena ISPs for the identities of the relevant subscribers. Magistrate Judge Joseph C.  
 4 Spero has denied without prejudice the ex parte application before him because he is concerned  
 5 about the appropriateness of joinder. That issue has been addressed in each of the four  
 6 Applications filed after Magistrate Judge Spero's decision, including in the Application filed in  
 7 connection with New Sensations, Inc. v. Does 1-1745, Case No. CV 10-05863 MEJ. In that  
 8 case, Chief Magistrate Judge James recently granted the ex parte application, noting in the Order  
 9 that

10 "joinder of all defendants at this stage of the litigation is proper.  
 11 This decision is without prejudice to any motion for severance by a  
 12 current Doe defendant who is later included in this action by his or  
 her true name."

13 Ex parte applications are currently pending in five cases, and a new ex parte application will be  
 14 filed in Magistrate Judge Spero's case.)

15 In the time following the granting of the first three Applications, counsel has negotiated  
 16 with various Internet Service Providers (ISPs) regarding costs and rate of throughput. Some  
 17 ISPs have represented that, between their obligations to provide similar information to law  
 18 enforcement organizations and to counsel for plaintiffs in other mass infringement cases, they  
 19 can only provide a fraction of the requested Doe identities per month, and they have various cost  
 20 demands. See, Call of the Wild Movie, LLC v. Does 1-1,062, pages 2, 27-39, for a description  
 21 of the type of negotiations that must be conducted separately with each of many different ISPs.  
 22 Of course, one would hope that ISPs would soon acquire the facility to meet the throughput  
 23 requested of them in view of the fact that many ISPs advertise their premium (i.e., higher cost)  
 24 services as the ones subscribers should purchase in order to **download music and movies** (i.e.,  
 25 infringers' desire to enhance their downloading experience helps drive up demand for ISPs'  
 26 premium services). See, for example, the promotional material by Time Warner Cable with  
 27 respect to its Internet services. A copy is attached hereto as **Exhibit 3**, with an oval and circle  
 28 added by the undersigned to draw attention to an ISP's promotion of its premium service.

In addition, during those months, counsel has set up systems that are intended to expedite the process of issuing subpoenas to the many ISPs. That and the understandings reached with ISPs' compliance departments should help expedite the process of obtaining Doe identities as new orders granting early discovery are granted.

**5** In future, ex parte applications in similar cases will be filed right after the complaints are  
**6** filed.

7 As indicated above, Plaintiff requests that no further Case Management Conference be  
8 set yet, and that, instead, Plaintiff be required to submit a status report approximately 150 days  
9 from now (i.e., on about September 26, 2011). That period of time will allow for (i) continued  
10 negotiations with ISPs regarding throughput and costs, (ii) ISPs to have 30 days to at least make  
11 their initial searches for subscriber identities and to notify each such subscriber of his or her  
12 opportunity to file motions to quash the subpoena with respect to him or her, (iii) notified  
13 subscribers to file motions to quash if they wish, and (iv) ISPs to provide to Plaintiff's counsel  
14 the identities of those subscribers that have not filed motions to quash.

15 | Respectfully submitted,

17 | Date: April 22, 2011

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**23** Plaintiff's request to vacate the Case Management Conference is **DENIED**. Instead,  
**24** the Case Management Conference is continued to Monday, September 26, 2011 at  
4:00 p.m. An updated Case Management Statement is due no later than  
September 19, 2011.

